U.S. Supreme Court are invoked. A Petition for Extraordinary Writ of Mandamus would be the most appropriate form for the Petitioner to petition for redress under the extraordinary circumstances of this case. As a result, Petitioner's Petition was timely filed, and the Supreme Court of the United States has unhindered jurisdiction in addressing this matter under Sup. Ct. R. 20 and 28 U.S.C. § 1651.

STATUTE LIMITATIONS

This Court recently ruled in Graham County Soil & Conservation District v. U.S. ex. rel. Wilson, 125 S. Ct. 2444;162 L. Ed. 2d 390 (2005) that limitations period of 31 U.S.C. §3731(b)(1) does not govern §3730(h) retaliation actions. Instead, the most closely analogous state statute of limitations applies. Pp. 4—13. To determine the applicable statute of limitations for a cause of action created by federal statute, this Court asks first whether the statute expressly supplies a limitations period. If not, the most closely analogous state limitations period applies. Pp. 4—5.

On perusal of the decision, no retroactive applicability is suggested for cases currently in the courts, such as this one, which Respondent has acknowleged was timely filed within the conventional, Federal six year statute limit for civil actions.

Respondent has acknowleged the commission of spoliation of evidence in this matter. A Government Contractor in healthcare, Respondent had a contractual duty to retain billing records for Government auditing purposes and for Petitioner's use by Employment Agreement. Spoliation of Evidence is a tort recognized by Florida courts. The tort encompasses intentional spoliation, negligent spoliation as

well as spoliation by third-party perpetrators such as accountants, auditors, attorneys etc. Coleman v. Eddy Potash, Inc., 120 N.M. 645, 649 (1995); Continental Insurance Co. v. Herman, 576 So. 2d 313, 315 (Fla. Dist. Ct. App. 1990); Smith v. Atkinson, 771 So. 2d 429, 432 (Ala. 2000). To recover damages plaintiff need not prove the exact dollar amount of damages, it is sufficient to show that plaintiff was damaged with certainty. Miller v. Allstate Insurance Co. , 573 So. 2d 24 (Fla. Dist. Ct. App. 1990) relying on C. McCormick, Damages §31 at 101-102 (1935); W.W. Gay Mechanical Contractor, Inc. v. Wharfside II, Ltd., 545 So. 2d 1348 (Fla. 1989).

If intent or fraud can be shown, punitive damages may be awarded. In State Farm Mutual Automobile Ins. Co. v. Campbell, 123 S.Ct. 1513 (2003), this Court instructed courts below to weigh the presence of a number of factors in awarding punitive damage awards--some of which are relevant to this case:

1. The tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others. [The intolerable workplace to which Petitioner was subjected (well characterized by the sworn depositions of Susan Anastay, Dr. Jean-Claude Bourque, and the Petitioner) and which Respondent refused to reform, was dangerous to Petitioner in a professional licensure and medical liability sense but much more dangerous to the patients being treated there.]

2. The target of the conduct had financial vulnerability. [Not only did Respondent retaliate against Petitioner by firing him due to his Protected Activity, by wrongfully retaining his earned wages, and by invoking the Employment Agreement's restrictive clause—thus

exiling Petitioner from the very patient base he needed to ply his livelihood—the Respondent then proceeded to spoliate the evidence needed by Petitioner to recover his meritorious claims in a court of law.]

3. The conduct involved repeated actions. [Respondent's sworn affidavits and those of his accountant or auditor describe a series of evidence spoliation sprees—some attributed by Respondent to computer "glitches", others to administrative blundering—in which virtually all of Petitioner's vital dispositive evidence, otherwise destined for this lawsuit, was spoliated.]

4. The harm was the result of intentional malice, trickery, or deceit. [The constellation of irregularities in Respondent's failure to preserve evidence coupled with involvement by the late Linda Perkins—highly-trusted Director of Operations of Respondent--who was later found by police committing ongoing fraud at the Respondent's premises, weighs heavily in favor of malice, trickery, and deceit.]

Statistically, the two largest categories of cases in which federal appellate courts have upheld punitive damage awards for repehensible conduct have involved intentional discrimination or fraud. Bogle v. McClure, 332 F.3d 1347, 1360-61 (11th Cir. 2003); Zhang v. Amer. Gem Seafoods, Inc., 339 F.3d 1020, 1043-44 (9th Cir. 2003); Youren v. Tintic Sch. Dist., 343 F.3d 1296, 1308-09 (10th Cir. 2003); Asa-Brandt, Inc. v. ADM Investor Servs., Inc., 344 F.3d 738, 746-47 (8th Cir. 2003); Rhone-Poulenc Agro, S.A. v. DeKalb Genetics Corp., 345 F.3d 1366, 1371 (Fed. Cir. 2003).

Date of Discovery for spoliation of evidence in this case was in March 2003. The statute limitations for the tort vary according to the basis of the spoliation...

FLORIDA STATUTE LIMITATIONS

95.11 Limitations other than for the recovery of real property.--Actions other than for recovery of real property shall be commenced as follows:

(2) WITHIN FIVE YEARS.--
(a) An action on a judgment or decree of any court, not of record, of this state or any court of the United States, any other state or territory in the United States, or a foreign country.
(b) A legal or equitable action on a contract, obligation, or liability founded on a written instrument.

(3) WITHIN FOUR YEARS.--
(a) An action founded on negligence.
(f) An action founded on a statutory liability.
(h)An action for taking, detaining, or injuring personal property.
(i) An action to recover specific personal property.
(j) A legal or equitable action founded on fraud.
(o)An action for...any other intentional tort, except as provided in subsections (4), (5), and (7).
(p) Any action not specifically provided for in these statutes.

The issue of spoliation arose from this Federal lawsuit. 28 U.S.C. § 1367, supplemental jurisdiction, applies. "[t]he federal claim must have substance sufficient to confer subject matter jurisdiction on the court. The state and federal claims must derive from a common nucleus of

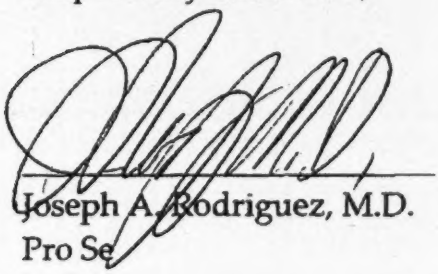
operative fact." United Mine workers v. Gibbs, 383 U.S. 715 (1966).

Given this to be the case and pursuant to Fed. R. Civ. P. Rule 15, Petitioner might then supplement the pleadings (with the gracious leave of the court) to include Spoliation of Evidence. With pleadings supplemented by a complaint or tort endowed with ample statute limitations, would this Federal lawsuit survive adverse retroactive interpretation of 31 U.S.C. 3730 (h) statute limits under Graham County Soil & Conservation District v. U.S. ex. rel. Wilson?

CONCLUSION

The petition for an Extraordinary Writ of Mandamus To Reverse Summary Judgment should be granted.

Respectfully submitted,



Joseph A. Rodriguez, M.D.
Pro Se

Date: August 30, 2005

No. 05-154

IN THE SUPREME COURT OF THE UNITED STATES

In re Joseph A. Rodriguez, M.D.
PETITIONER

ON PETITION FOR AN EXTRAORDINARY WRIT OF MANDAMUS TO REVERSE JUDGMENT TO

The United States Court of Appeals for the 11th Circuit

PETITION FOR REHEARING

Joseph A. Rodriguez, M.D.
Pro Se

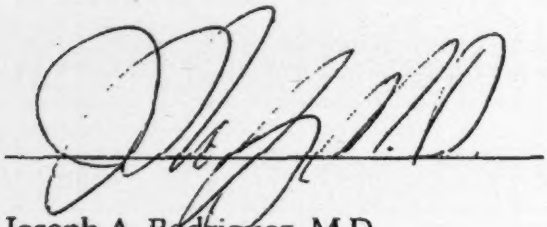
5980 SW 15 Street
Plantation, FL 33317

Telephone:
(954) 791-2886/Fax:(954) 389-3328

CERTIFICATE

Petitioner hereby certifies that this Petition for Rehearing shall be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. This Petition for Rehearing is presented in good faith and not for delay.

Respectfully submitted,



Joseph A. Rodriguez, M.D.

Pro Se

October 21, 2005

INTRODUCTION

Petitioner respectfully petitions for rehearing of a Court order denying his Petition for Extraordinary Writ of Mandamus to Reverse Summary Judgment. The request for rehearing is based upon Sup. Ct. Rule 44.2.

GROUNDS FOR REHEARING

John J. Roberts, Chief Justice of the Supreme Court of the United States, was confirmed by the U.S. Congress on Friday, September 30, 2005. Chief Justice Roberts began his duties at his new Federal post on Monday, October 3, 2005--the date on which the Court denied Petitioner's Petition for Extraordinary Writ of Mandamus to Reverse Summary Judgment. The actual Court Ruling states:

> "The petition for a writ of mandamus is denied. The Chief Justice took no part in the consideration or decision of this petition."

Petition, p. 2, ¶ 5:

> "The decision of the 11th Circuit to affirm summary judgment when there exist issues of material fact has so far departed from the accepted and usual course of judicial proceedings...as to call for an exercise of this Court's supervisory power."

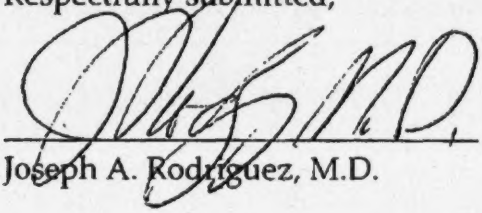
Because Petitioner had petitioned the Court under its discretionary appellate and supervisory jurisdictions, Petitioner was disappointed when he came to realize that denial of his Petition for Extraordinary Writ of Mandamus to Reverse Summary Judgment had taken place without the participation of the Supervisor of the Court, Chief

Justice John J. Roberts, in the "consideration" and "decision" processes concerning the Petition.

CONCLUSION

Petitioner prays that the Court grants him a rehearing of his meritorious Petition for Extraordinary Writ of Mandamus to Reverse Summary Judgment before a quorum of Justices and with the participation of Chief Justice John J. Roberts in the "consideration" and "decision" of the matter.

Respectfully submitted,



Joseph A. Rodriguez, M.D.

Pro Se

Date: October 21, 2005